

**Comments from  
The National Association of Tower Erectors  
to  
the Federal Communications Commission  
on  
WT Docket No. 03-187**

**Notice of Inquiry: Effects of Communications Towers on Migratory Birds**

**I. Introduction**

The National Association of Tower Erectors (NATE) is a non-profit organization serving as the unified voice of the tower erection, service, and maintenance industry. Formed in 1995 with 62 founding member companies, NATE is now comprised of approximately 500 member companies, representing over 80% of employees who are erecting communications towers.

NATE has worked on a variety of issues with a number of federal agencies, including the Federal Communications Commission, the Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health, and the U.S. Fish and Wildlife Service, on policy matters that affect the safety and/or effective operations of the tower erection industry nationwide.

**II. Overview**

NATE has reviewed the Notice of Inquiry in which the FCC indicated its intention to gather comment and information on the impact that communications towers may have on migratory birds. We offer the extensive background of our members in the telecommunications tower arena and their extraordinary experience in terms of tower personnel working at tower sites in the very early morning. Further, we offer our expertise – not to mention our vested interest – in a collaboration with the FCC, other federal agencies, and other interested parties in researching and reviewing the matter at hand. We have also conveyed our abiding interest in continuing to work with the U.S. Fish and Wildlife Service and the Communication Tower Working Group as they explore ways to protect migratory birds, at present by seeking comment on the USFWS' Draft Strategic Plan entitled, "A Blueprint for the Future of Migratory Birds," which is examining other potential causes (including illness, predation, degradation of habitats, and collisions with buildings) of the possible loss of migratory birds.

While NATE has not undertaken scientific studies on birds colliding with towers, we have a great deal of anecdotal reports which suggest that only in the most severe of wind conditions have we ever found significant numbers of dead birds at or near the base of telecommunications towers in the early morning hours, and at no time have the numbers reached the extreme reports of thousands or even hundreds of bird deaths which have been suggested by other sources. Indeed, in previous discussions with our Board of Directors, who collectively have hundreds of

years of experience on tower sites, not one member has witnessed more than a few dead birds at one time. Nevertheless, these reports, by people in the field who are perhaps most familiar with their work sites, do not represent detailed studies or scientific research. They do, though, underscore the critical importance of compiling scientific data on what may or may not be a problem in the magnitude suggested by some but refuted by others. Naturally, it will be imperative that any and all research be performed in a balanced, coordinated fashion, to avoid any potential prejudging, conflict of interest, or unfairness.

Our comments to USFWS indicated that we concur with the stated intention that the research to be undertaken will examine a variety of possible factors which may contribute to migratory bird problems, including habitat loss and deterioration, pesticides and other contaminants, illnesses, and predators. In addition, the research coordinated by that agency will also explore towers and other structures. We respectfully suggest that it would be altogether appropriate to look at buildings and such other non-telecommunication structures as energy towers, windmills, and the like.

While we recognize that these other factors which might contribute to migratory bird loss are not within the jurisdiction of the FCC, we believe strongly that a balanced approach to reviewing this matter and possible causes of bird loss – which ultimately might lead to as-yet unspecified mitigation mandates or requirements – is absolutely essential. Failure to do so could adversely, excessively, and unfairly target our industry.

In this vein, NATE also strongly urges that the FCC coordinate, or at least be a party to, research and review efforts being undertaken by the USFWS.

In any event, we commend the FCC for its stated willingness to work with interested and affected parties included the telecommunications tower industry which NATE represents.

In fact, we are polling our members at this time to determine the manner in which they can help advance our mutual interests in ensuring comprehensive, fair, and balanced research on the migratory birds matter.

### **III. Comments on WT Docket No. 03-187: the Federal Communications Commission's "Notice of Inquiry on the Effects of Communications Towers on Migratory Birds"**

We agree strongly with the FCC's view on the current state of scientific information. Of course, we endorse the statement – which we have frequently suggested ourselves – that “current knowledge about both the extent to which towers kill migratory birds and the specific factors that may contribute to any danger is limited.” We commend the FCC for its realistic approach as well as its acknowledgment that, “for the 5-year period 1995-1999, very little research was published or conducted that is relevant to the bird-communications tower collision issue.”

In the absence of hard research rather than anecdotal reports, it is indeed difficult, if not

impossible, to comment or provide analysis of existing scientific research and studies relating to this issue, nor are we able to comment directly on matters such as tower height, lighting, and the like. Our members may have perspectives on matters such as times of day and locations of their observations.

While we are aware of initiatives such as the Fatal Light Awareness Program established in Toronto a decade ago to help prevent migratory bird crashes into office towers at night, a review of building mitigation techniques may not be analogous to towers. What it does point out is that, first and foremost, we need to have a greater understanding of the depth of the potential problem, and then, if warranted, ways to address it.

Accordingly, our comments herein by necessity are somewhat general in nature, although we reiterate our interest in cooperating with the research and the researchers.

As you will note in our accompanying comments on the USFWS review, we believe it is a highly laudable goal to seek to protect the migratory bird population. However, we must stress that, in our view, a balanced approach must consider socioeconomic factors and impacts on the national economy, and our nation's ability to access critical information and technology in a timely fashion as well as to enhance our homeland security efforts. Unquestionably, the continued reliance on telecommunications facilities, including towers, contributes enormously to the national interest. However, here, too, we ourselves must be careful not to put the cart before the horse. We, too, must restrain ourselves until the research which we continue to advocate is completed.

Before we do, though, we would be remiss if we didn't express one additional thought at this time. Both the FCC and the USFWS appropriately suggest the importance of protecting migratory birds, we are concerned by the standards by which the protection may apply. For example, the section in the Notice of Inquiry that deals with Environmental Statutes and Regulations states that the Migratory Bird Treaty Act makes it "unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture or kill...any migratory bird" unless permitted by FWS." While we are not in any way, shape, or form suggesting that management and protection of the migratory bird population is not important, our question here deals with degree. We interpret the aforementioned statement as calling for a zero tolerance standard; USFWS staff said at a Communication Tower Working Group meeting that "if you're killing birds, you're criminally liable." Yet we do not even apply zero tolerance to humans. For example, the Clean Air Act does not include stringent enough standards to protect all asthmatics.

Additionally, and, again, not to minimize the value of migratory birds, it is unclear whether different standards are being envisioned for species which are endangered. Certainly, protecting birds such as the spotted owl has true merit. But if we are allowing birds to be hunted, but at the same time are calling for a stringent standard, is this not inconsistent? Moreover, is the public good not of value as well?

#### **IV. Response to USFWS Questions**

We believe that our responses to the U.S. Fish and Wildlife Service complement the views which we are expressing to the FCC. Accordingly, our comments to the USFWS follow.

As you may know, the USFWS paper specifically asks respondents to answer three questions.

*QUESTION 1. What do you consider to be the highest priorities for the U.S. Fish and Wildlife Service in migratory bird conservation?*

*ANSWER 1.* The National Association of Tower Erectors (NATE) asserts that of paramount importance are: collecting and analyzing additional scientific data on the habits and movement of migratory birds; a thorough examination of the various suggested causes of migratory bird deaths; and the degree to which bird deaths are occurring, before federal agencies such as the U.S. Fish and Wildlife Service or the Federal Communications Commission take action against entities or organizations that are purported to be contributing significantly to as-yet unsubstantiated bird deaths.

We respectfully must voice our strong dissent to the repeated allusion to assertions by USFWS personnel (Mr. Al Manville) that “an estimated four to five million birds or more may be killed each year due to collisions with communications towers.” Even the Fish and Wildlife Service acknowledges that insufficient research has been performed on this matter. In fact, the Notice of Inquiry states:

“a March 2000 review of recent literature and research in progress that was prepared for FWS, Office of Migratory Bird Management, found, among other matters, that: (a) for the 5-year period 1995-1999, very little research was published or conducted that is relevant to the bird-communications tower collision issue; (b) since certain “major reviews” of the late 1970s and early 1980s, there has been little research on the subject; and (c) for the period before 1985, there is a body of literature on the issue, but most of it is anecdotal and the literature itself has not been examined analytically.”

Unquestionably, substantially more research is essential, since it is widely acknowledged that existing research is dated and incomplete. Accordingly, NATE believes that it is inappropriate and short-sighted to take excessive, unwarranted, ill-advised, disruptive, or unnecessary mitigation or punitive actions until it has been established what the breadth of the problem is, and the possible steps to address it have been analyzed.

*QUESTION 2. Are the Program Goals adequate and comprehensive? Do any need to be altered or restated? Are there additional goals that need to be added?*

*ANSWER 2.* We agree with the USFWS goal of protecting the migratory bird population for which it is responsible. We also acknowledge the relationship of migratory birds to the nation’s recreational, environmental, cultural, and economic well-being. Yet at the same time, we are

constrained to reiterate that an important programmatic goal must be to determine, in a timely, scientific, and comprehensive fashion, the degree to which migratory birds may be adversely impacted by habitat degradation, illness and predation, weather, and human-caused mortality. Moreover, in reviewing possible human-caused mortality (and, if warranted, potential solutions), it is necessary to review the possible impact of different man-made structures, such as buildings and energy facilities in addition to telecommunications towers.

Should not the goals also specifically reference the importance of undertaking an examination of possible causes of bird deaths, if in fact they are occurring in significant numbers?

Generally, it seems that the goals may be putting the cart before the horse. They seem to suggest certain actions through the use of words such as “restore,” yet such an action, while noble, remains in our view undetermined and unsupported at this time.

Additionally, two of the goals allude to economic benefits and significance. Indeed, the first goal advocates the protection of migratory bird populations “to maximize their...socioeconomic benefits.” That, too, is a laudable goal. We respectfully suggest that allegations made by some people, including officials within the Fish and Wildlife Service, that substantial numbers of birds may be killed each year by collisions with communications towers are not only unproven scientifically or analytically, but themselves can have adverse socioeconomic impacts.

If, for example, construction of new telecom towers is blocked, it could have serious deleterious consequences not only for our industry, but for American businesses, all levels of government, and the consuming public. As a result of the Telecommunications Reform Act of 1996 and the burgeoning demand for vastly more telecommunications services by citizens throughout the country, industry analysts expect that many thousands of telecom sites and facilities are needed. Parenthetically, the Notice of Inquiry also cites the added construction pressure arising from the nationwide conversion to digital television and the expansion of emergency communications. Individually and collectively, these enormous calls for greater communications services come from individuals and entities across the political, economic, geographic, professional, and recreational spectrums. As such, we believe strongly that unfairly targeting telecommunications facilities prematurely will be a socioeconomic catastrophe as well as an injustice. Moreover, it can compromise the nation’s safety and homeland security.

To amplify this point, which also addresses implementation strategies and programmatic priorities, we stress that the impact on the public must be considered. The Draft Strategic Plan discusses a variety of bird-related activities which argue – justifiably – for protecting the migratory bird population. However, it is also important to factor in the impact on people, who unquestionably will want to continue to utilize their cell phones or other telecom services, work in their office buildings, and utilize the energy provided by various energy structures. Not only does the consuming public demand continued services, but our very economy depends on them as well.

While we commend the Fish and Wildlife Service for its leadership in managing and protecting species under its jurisdiction, we respectfully suggest that we must be careful in defining that

protection. On the one hand, the goal that all migratory birds should be protected is indeed laudable. On the other hand, a practical consideration is that full protection under the law is not even provided to humans under statutes such as the Clean Air Act, which does not include stringent enough standards to protect all asthmatics, for example.

Parenthetically, it strikes us as somewhat conflicting to advocate stringent bird protection while simultaneously extolling the virtues of hunting the birds.

*QUESTION 3. Are the Implementation Strategies adequate and comprehensive? Do any need to be altered or restated? Which strategies do you consider to be the highest priority?*

*ANSWER 3.* This section states that “information is insufficient for many other migratory birds, which results in the inability to reasonably predict the outcome of management activities.” While we agree that existing information is indeed insufficient, we again wonder about the efficacy of “management activities” before such additional information is obtained.

This section then notes that a lack of resources contributes to the absence of comprehensive migratory bird status information. We, along with our colleagues with CTIA, PCIA, NAB, and others, made this same point at several Communication Tower Working Group meetings on the migratory bird issue, when certain organizations asserted that the “big-pocketed” communications companies should finance all the necessary research. We responded that our organizations were not to be confused with the Time-Warners of the world. However, we expressed a willingness to cooperate with USFWS personnel, and NATE again offers to do so. We would be pleased to work with you, for example, in the development of appropriate surveys.

For the most part, the implementation strategies seem reasonable. However, we question how the language dealing with undertaking conservation and management actions is to be interpreted, particularly in the absence of adequate data.

As we continue to note, we presume that the research will focus on man-made structures beyond just telecommunications towers. These include, of course, normal buildings as well as skyscrapers, energy facilities, and the like. Also, we recognize that a variety of possible mitigation or preventative features should be explored, such as lighting, color, etc. Moreover, if, as some suggest, there are large numbers of bird deaths occurring at night, then on-site research is necessary in the early morning hours.

## **V. Conclusion**

As noted, NATE believes strongly that it, along with others in the communications field, must be involved throughout the process envisioned in the Notice of Inquiry as well as in any possible rulemaking procedure which might subsequently ensue. Our submittal of comments represents but a down payment on our abiding interest in partnering and collaborating with the FCC as it explores and reviews this important matter. Since we assume, by virtue of the FCC’s stated

goals of seeking more information about migratory birds and on possible mitigating factors, that the agency's efforts will continue for some time, there should be ample opportunity for us and others to maintain our interaction with the FCC. For example, we anticipate that interested parties may continue to accumulate needed evidence and documentation for your review, since sufficient research cannot possibly be undertaken and concluded by the comment deadline.

To that end, we reiterate our earlier statement that we are in the process of seeking NATE member input into the best way for us to ensure that the research envisioned is comprehensive and fair. Our organization and our members – individually and collectively – have an open mind toward ways in which we can be helpful.

Additionally, the Introduction section of the Notice of Inquiry stipulates that, “Depending on the record developed in this proceeding, the Commission will consider whether the current state of research would support further action by the Commission in this area, including possible amendments of its environmental rules.” Should this occur, our participation would certainly be warranted.

Your consideration of these comments and recommendations is greatly appreciated. If you have questions or need additional information, please don't hesitate to contact NATE at the address listed below:

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